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## IS LAW AND MORALITY INSTINCTIVE?

Dr. A. L. Kroeber maintains that there has not been an evolution or development of morality in the progress from savagery to civilization, but that, on the contrary, there is no difference between the morality of savages and ourselves, and that the moral element in humanity is basically instinctive. He says: "That any people, or any person even, has ever really regulated conduct by ideas or reason, is a delusion. The delusion is a common one, because it is pleasing to flatter ourselves that our acts spring from purely rational motives. In fact, and of course, all real action precedes and determines intellectual reasoning, which, being analytical, cannot but be *ex post facto* and secondary. It is possible that there may exist beings whose reason is action, not its product; but if so, they will no longer be men. There can be no doubt that the essential moral ideas of man spring from instinct. The repugnance toward murder, appropriation of the possessions of others, treachery and want of hospitality is based as little on considerations of social advantage or logical deductions as the sentiments are common to all races and times. The actions that are naturally the most abhorrent to everyone, such as cannibalism, incest and lack of parental or filial devotion, are so thoroughly instinctive that these crimes have hardly to be dealt with by most people. In the matter of incest, it is well known that the common explanation of its enormity, as consisting in its inevitable consequence of deterioration of race, is entirely fallacious. We know from countless generations of domestic animals that it is only an extreme of close breeding that produces loss of racial fertility and individual vigor. Yet the crudest savages and the most refined philosophers abhor it equally."

Prof. Kroeber's conclusions are interesting and suggestive from the standpoint of the theory of the "natural offense" as formulated by Garofalo. If they are entirely correct, the attempt to prescribe rules of conduct by legislation is wholly without justification. It is interesting to note that Garofalo regards the natural offense as a violation of the emotional feelings.

While Prof. Kroeber's statement is extreme, and we can hardly assent to the proposition that conduct is in no degree regulated by reason, it brings out in a picturesque way the undoubted truth that the causes which regulate human conduct to a very large degree do not depend on conscious reasoning. E. L.

**The Psychological Action of Punishments.**—An interesting article on the above subject is published in the *Archives d'Anthropologie Criminelle*, for January, by Dr. Maxwell. He says that punishment originally was simply compensation. It depended on the will of the victim of the crime, was regulated by private vengeance; the personality or intention of the delinquent being of no importance, the main idea is to render evil for evil. All the members of the clan were responsible for the damage, whether wilful or not. The first progressive step was to individualize responsibility, the clan being discharged of responsibility if it surrendered up the criminal. This is the germ of individual responsibility. In connection with the idea of compensation it formed the *lex talionis*. The next step was to separate voluntary and involuntary acts and to analyze the intention. This was principally the work of religion, which combined moral notions and transformed the idea of compensation into that of expiation. Finally, however, punishment came to be conceived of as example. In modern psychological language it plays the inhibitive role. But under what conditions will it be truly inhibitive? Evidently when the idea of the act is associated with disagreeable or painful feelings. Dr. Maxwell thinks

## PRISONERS AND PUNISHMENT

that the present system of punishments does not fulfill the function of inhibiting crime, but rather stimulates it. The present system aims largely to make punishments equal for the same offenses, while the criminals punished present a variety of characteristics and are very unequally affected by the same punishment. In particular, they differ from honest men, and what would operate as an inhibition in the case of an honest man will not so operate in the case of a criminal. He concludes that the idea of equivalence should be substituted for that of equality, and that the punishment should be adapted to the individual to be punished. This view overlooks the fact that the effect of punishment is not confined to the individual punished, nor intended to be, although Dr. Maxwell thinks that the possibility of reformation by punitive treatment has been exaggerated. In the case of the man who has committed a crime, the act has evidently not been inhibited. Dr. Maxwell, however, exaggerates the differences between different individuals and underestimates the necessity for an inhibitory force in the case of honest men. The existence of punishment as inhibitory force in the case of honest men. The existence of punishment as The value of punishment as psychological motive lies in its being adapted to exert an inhibitory effect, not on the smaller number of exceptional individuals, but on the great mass of the people.

E. L.

**Prisoners Aid Review.**—At the last meeting of the American Prison Association a national prisoners' aid society was organized, there being already some thirty state organizations in existence, each having little knowledge of the activities of the others. These have now joined hands and organized the national association for the promotion of the following objects:

"The development and extension of the work for released and other prisoners, including prison visiting, inspection of correctional institutions, assistance to prisoners, probation, parole, research, legislation, and public education on the problems of penology and criminology."

At the initial meeting of the national society it was decided to publish a monthly bulletin "to promote coöperation between the societies now in the field, to be a medium of general information in the prison field, to develop public opinion regarding the proper treatment of crime and criminals, to aid in extending prisoners' aid work—and, in short, to be a kind of 'trade journal' in the correctional field."

The first number of the *Review*, as the new publication is named, appeared in January of the present year, with Mr. O. F. Lewis, secretary of the New York Prison Association, as the editor. The publication office is at 135 East Fifteenth street, New York, and the subscription price seventy-five cents a year.

**Drastic Legislation Against Alien Criminals Proposed.**—Judge Lewis L. Fawcett, of the county court of Brooklyn, N. Y., in sentencing two Italian kidnapers to long terms in the state prison recently, took occasion to advocate drastic measures for the suppression of crime in New York and for preventing the further immigration into this country of criminals from abroad. Judge Fawcett suggests that a certificate of good moral character, signed by the chief of police of the district from which he comes, be required of every alien admitted to the United States. Those without such certificates should be immediately deported.

"If the newcomer has served time for some trivial offense," he says, "the